

# Key messages arising from the High Court ruling about Dr Bawa

gpappraisalsw (NHS ENGLAND)

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**This information is being sent to all doctors on the NHSE Southwest Performer list on behalf of Dr Caroline Gamlin Responsible Officer. We have also attached the Responsible Officer and Appraisal Network information sheet produced by the national revalidation team for NHS England.**

## Messages arising from the High Court ruling about Dr Bawa-Garba:

Some key facts

- **Dr Bawa-Garba's e-portfolio was not part of the evidence put before the court and jury.** Her MPS defence team chose to present it in her defence at the appeal. See the MPS statement links below.
- **The GMC have a policy never to ask for e-portfolio or appraisal documentation in their investigation of any case brought before them.** See the GMC statement link below.
- **The GMC see reflective practice as core to our professionalism and learning.**
- **As highlighted in the MPS statement – you are far more likely to be found culpable if there is no evidence of reflection.**

**Summary:** The best way for us all to protect ourselves from criticism when mistakes happen is to be open and honest with patients (we all have a Duty of Candour) and to work hard to put right the circumstances that allowed the error to occur and make changes that will prevent similar issues in future. By documenting lessons learned and changes made in our written reflective notes for appraisal, we have evidence that can be used in our defence should the necessity arise. Any message that we should not be including evidence of our reflective practice in our appraisal portfolios is misguided and probably based on the erroneous impression that Dr Bawa-Garba's reflection was used against her, when it was not.

We want to continue to provide you with valuable appraisals that facilitate your personal and professional development and help you to demonstrate that you are not only up to date and fit to practise but also maintaining and improving the quality of your patient care. Demonstrating a few examples of high quality reflection is key to that aim. You may find the NHS England information sheet on confidentiality of reflection in appraisal useful (see attached)

We have had a number of GP's whose GMC complaint has gone no further because of the reflections shared at appraisal which the doctor has submitted to the GMC.

## Background:

Over the past week we have all been concerned about the reporting (and misreporting) about the High Court ruling about Dr Hadiza Bawa-Garba.

The most serious concerns are about how all of us as doctors (any of whom may make a mistake at any time) can work confidently in systems under huge pressure - which may be inherently unsafe due to mismatched capacity and demand – and which would be even more unsafe if we did not continue to work.

GMC FAQ 8. makes clear that the decision to appeal the MPTS decision was on a point of law, not because the GMC ‘wanted’ this doctor struck off. The parallel work to address broader issues around medical manslaughter is important. I sincerely hope that by raising this issue some changes for the good will come out of the tragic death of this child.

The secondary concerns are about the widely misreported impression that Dr Bawa-Garba’s reflection on the incident was used against her. We have heard many doctors say that they will no longer feel confident to document their reflections openly and honestly as a result. We think this would have terrible consequences for our individual professionalism and for patient care. The concern remains that Courts have always had the right to subpoena anything that they thought would be useful evidence, and even though this has always been true, and even though reflection has historically only ever been used to demonstrate insight and learning, this is now causing widespread anxiety due to the misapprehension that Dr Bawa-Garba’s reflection was used against her.

## What this means for us - a practical guide

Like any documentation, written reflection has to follow the principles of good information governance and data protection and must not include third party identifiable details. The GMC have recently issued additional guidance that makes it very clear that just removing a patient’s name may not be enough if the circumstances of the case are so rare or unusual that someone in the know could identify the patient from the description (e.g. a case of bagpiper’s lung etc.).

### For appraisers and appraisees, this means...

- The GMC require you to demonstrate that you are a reflective practitioner who thinks about the patient in front of you and the quality of what you are doing as a professional habit by providing a few high quality examples of your reflection. This normally means written reflection.
- Using the example of this case as a reason for refusing to document reflection misses the point that the reflection was used in her defence and about the value of (and necessity for) reflection and needs to be challenged by appraisers who come across portfolios with no examples of reflection.
- Reflective notes have to obey the principles of good information governance and avoid third party identifiable data unless it is in the public domain
- Anonymising things properly can be difficult but has to be done - it can be helpful to ask yourself: “If a colleague or receptionist saw this would they know which patient it was about?”
- Appraisees must include in their portfolio their reflection on all GMC level Significant Events and Complaints, although not all will necessarily need to be discussed in depth with their appraiser
- The focus should be on the lessons learned and any changes made as a result
- Think quality not quantity; reflection should be succinct
- Honesty is essential if there is to be learning. It is part of our professional integrity - our patients expect it of us and we should demand it of ourselves

- Original, non-anonymised, information can be shared with your medical appraiser (where they are also doctors, because of the strict rules of professional confidentiality that bind them) and should be shared in some cases (e.g. complaints and compliments) so that the appraiser can say that they have seen the original information in the summary
- If you have any concerns about including reflections on a particular complaint or significant event, please ask the appraisal team for advice.
- Appraisers can help doctors who have written too much or failed to anonymise successfully to remove information from the electronic portfolio before it is submitted
- The appraiser has to be careful that the summary obeys the principles of good information governance and avoids third party identifiable data unless it is in the public domain

<https://www.medicalprotection.org/uk/for-members/press-releases/press-releases/mps-response-to-judgement-on-the-case-of-dr-bawa-garba-vs-gmc>  
<https://www.medicalprotection.org/uk/for-members/press-releases/press-releases/e-portfolios-remain-an-important-part-of-a-doctor-s-professional-development>

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